

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16322 of 2004

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1. Shyama Devi Jha, wife of late Braj Nandan Jha.
1-A. Bishnu Kumar Jha @ Daya Shankar Jha son of late Braj Nandan Jha.
1-B. Vinita Jha
1-C. Suman Kumari Jha
1-D. Punam Kumari Jha
1-E. Renu Jha, Sl. No. 1-B to 1-E daughters of Late Braj Nandan Jha, all residents of
New Colony, Quarter No. 23, Lane No. 4, N.C. Road, Musabani, P.O. and P.S.
Musabani, District West Jamshedpur, Jharkhand. (Substituted).

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Darbhanga Range, Darbhanga.
4. The Deputy Inspector General of Police, Purnea.
5. The Superintendent of Police, Araria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dhirendra Kumar Jha 2
For the Respondent/s : Mr.Gp7

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 24-08-2018

The original petitioner, namely, Braj Nandan Jha,
had died on 25.12.2007 and thereafter his legal heirs have been
substituted vide order dated 23.7.2008.

2. The present writ petition has been filed for quashing
of the order of punishment of dismissal from service dated
26.09.2002 as well as the appellate order dated 26.2.2004.

3. The brief facts of the case are that a charge sheet
was issued to the original petitioner which is dated 20.6.1985
and the departmental proceeding was initiated on the allegation
that the original petitioner had brought one accused at the police
station and had beaten him on 12.4.1985 resulting in his death
on 13.4.1985. Thereafter, a criminal case was also filed and the



departmental proceeding had also continued, however, the disciplinary authority was of the view that the final outcome of the criminal case should be awaited. The criminal case launched against the original petitioner and others had resulted in acquittal by a judgment dated 23.2.1999 passed by the learned 6th Additional Sessions Judge, Purnea in Sessions Trial No. 64 of 1989. The disciplinary authority had then vide an order dated 31.5.2000, on account of exoneration of the original petitioner in the criminal trial, had exonerated the original petitioner from the disciplinary proceeding and directed for his continuance in police service. However, suddenly on 25.10.2001 a second charge sheet was issued on same and similar allegation as contained in the charge sheet dated 20.6.1985, which has resulted in exoneration of the petitioner from the departmental proceeding and the petitioner was directed to participate in the enquiry proceedings. The enquiry officer, in a summary manner, had concluded the enquiry without affording proper opportunity to the petitioner to cross examine the witnesses who were examined on behalf of the original petitioner and then submitted his enquiry report dated 16.5.2002 finding the charges levelled against the original petitioner to have been conclusively proved. A second show cause notice dated 14.6.2002 was issued to the



petitioner and thereafter the order of punishment dated 26.9.2002 was passed whereby and where under the petitioner was dismissed from service. The original petitioner preferred an appeal which was dismissed summarily vide order dated 7.4.2003, which was challenged by the original petitioner before this Court and this Court had quashed the same and remanded the matter back to the appellate authority. The appellate authority had again passed an order dated 26.2.2004 whereby and where under the appeal of the original petitioner has been dismissed.

4. The learned counsel for the original petitioner has submitted that once the charges leveled against the original petitioner, had resulted in exoneration of the petitioner, no second departmental proceeding could have been initiated on same and similar allegation, especially on account of the acquittal of the original petitioner in criminal proceedings where after, on same and similar charges levelled against the original petitioner, the order of punishment has been passed, hence the order of punishment is bad and is fit to be set aside.

5. Per contra, the learned counsel for the respondents does not dispute the position that the original petitioner had been exonerated in the departmental proceeding



arising out of the charge sheet dated 20.6.1985 and on same and similar allegation another departmental proceeding was initiated vide order dated 25.10.2001 which resulted in impugned order of punishment dated 26.9.2002.

6. I have heard the learned counsel for the parties and perused the materials on record. I find from the records that the departmental proceeding and the criminal proceeding were launched against the petitioner on same and similar charges and once the petitioner has been exonerated in the criminal trial, the departmental proceeding based on identical and similar set of facts cannot be permitted to stand. In this regard, reference be had to a judgment of the Hon'ble Apex Court reported in (2006) 5 SCC 446 (G.M.Tank vs. State of Gujarat &Ors.) paragraph-30 whereof is quoted herein below:-

“30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other



words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand".

7. The other issue, which arises for consideration in the present proceeding, is that once the charge sheet issued to the petitioner has resulted in exoneration of the petitioner from the disciplinary proceeding, no second disciplinary proceeding can be permitted to continue on same and similar allegation, hence the continuance of the second departmental proceeding against the petitioner was/ is itself perverse and it is wrongful exercise of power on the part of the disciplinary authority.



Reference be had to two judgments of this Court reported in 1998(1) PLJR 622 (**Brij Mohan Prasad & Anr. Vs. Bihar State Electricity Board and Ors.**) and 1994(2) PLJR 857 (**Bilat Roy Vs. The State of Bihar & Ors**). Hence, on this ground alone, the present petition is liable to succeed.

8. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the writ petition is allowed and the order of punishment dated 26.9.2002 is quashed. As a consequence of quashing of the order of punishment, the appellate order dated 26.2.2004 is bound to fall, hence, it is set aside. The legal heirs of the original petitioner would be entitled to all consequential reliefs as a result of quashing of the order of punishment dated 26.9.2002 and the appellate order dated 26.2.2004.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
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